

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

In the Matter of Protest of:

**CASE NO. 2009-130**

TBP Services, Inc.

**POSTING DATE:**

Department of Juvenile Justice

IFB No. 09-55571

Correctional Supplies

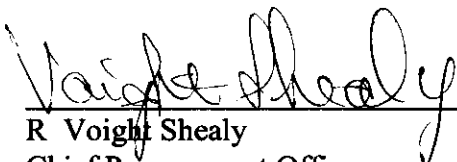
**AUGUST 28, 2009**

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest from TBP Services, Inc. (TBP). With this invitation for bids (IFB), the Department of Juvenile Justice (DJJ) attempts to procure correctional supplies. TBP protested the intent to award to Bob Barker for Lot #2.

Upon receipt of the protest letter from TBP (copy attached), Steve Pullie, DJJ Director of Procurement Services, asked the CPO to cancel DJJ's award to Bob Barker because of an administrative error due to an input error on the preference calculator form, which led to an incorrect award. The CPO conducted an evaluation of the preference calculations and determined that an error did indeed occur in determining the award. The CPO authored a written determination cancelling the award for Lot #2 to Bob Barker prior to performance. (Copy attached)

**DETERMINATION**

With the intent to award to Bob Barker cancelled, the relief requested by TBP has been granted. Consequently, this protest is made moot, and is therefore dismissed. The matter of subsequent award is returned to DJJ for determination in accordance with the Consolidated Procurement Code.

  
\_\_\_\_\_  
R Voight Shealy

Chief Procurement Officer  
for Goods and Services

  
\_\_\_\_\_  
Date

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 83.1 of the 2009-2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 23, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

<b>STATE OF SOUTH CAROLINA</b>	)	<b>BEFORE THE CHIEF PROCUREMENT</b>
<b>COUNTY OF RICHLAND</b>	)	<b>OFFICER</b>
	)	
	)	
<b>IN THE MATTER OF:</b>	)	<b>DETERMINATION</b>
<b>AND CANCELLATION OF AWARD</b>	)	
	)	<b>CASE NO. 2008-130</b>
	)	
<b>DEPARTMENT OF JUVENILE</b>	)	
<b>JUSTICE</b>	)	<b>POSTING DATE:</b>
	)	
	)	<b>AUGUST 28, 2009</b>
<b>CORRECTIONAL SUPPLIES</b>	)	
	)	
<b>IFB No. 09-5557</b>	)	
	)	

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This matter is before the Chief Procurement Officer (CPO) pursuant to a request from the Department of Juvenile Justice (DJJ) to cancel the award of Lot #2 of the solicitation to Bob Barker Company. Steve Pullie, DJJ Director of Procurement Services, wrote to the CPO, "SCDJJ has discovered that an input error on the preference calculator form led to an incorrect award. SCDJJ requests relief from this award as allowed under the SC Consolidated Procurement Code regulation 19-445.2085(C ) Cancellation of Award Prior to Performance due to an administrative error."

#### **CPO FINDINGS**

On June 8, 2009, the Chief procurement Officer (CPO) received a protest from TBP Services, Inc. (TBP) regarding the South Carolina Department of Juvenile Justice's (DJJ) solicitation # IFB09-5557 for correctional supplies. Specifically, TBP protested DJJ's award of Lot #2 of the solicitation to Bob Barker Company alleging:

TBP Lot#2 bid prices \$37,192.36 -TBP claimed SC in state vendor preference/no US end product/no SC end product

Award went to BOB Barker Co. lot #2 bid price \$34,859.44 did not claim vendor preference/no US end product/no SC end product

TBP has discussed with the DJJ a possible misapplication or miscalculation of the vendor preferences regarding the calculations of award for the solicitation listed above.

One of our employees has tried to apply the preference as written in the sol and we have come up with TBP with SC Vendor preference to have won the lot#2 group of items by \$107.24. (Copy attached)

Upon review of the award, on June 9, 2009, Steve Pullie, DJJ Director of Procurement Services, wrote to the CPO, "SCDJJ has discovered that an input error on the preference calculator for led to an incorrect award. SCDJJ requests relief from this award as allowed under the SC Consolidated Procurement Code regulation 19-445.2085(C ) Cancellation of Award Prior to Performance due to an administrative error."

According to Mr. Pullie, the raw bids for Lot # 2 were as follows:

<u>Bidder</u>	<u>Bid Amount</u>	<u>Preferences Requested</u>
TBP	\$37,192.36	SC Resident Vendor
Bob Barker	34,859.44	None
Murray Co.	40,126.60	US End Product

SCDJJ applied the preferences requested to derive the adjusted bid amounts for comparison, as follows:

<u>Bidder</u>	<u>Bid Amount</u>	<u>Preferences Requested</u>	<u>Adjusted Bids</u>
TBP	\$37,192.36	SC Resident Vendor	\$37,936.21
Bob Barker	34,859.44	None	37,299.60
Murray Co.	40,126.60	US End Product	42,935.46

### **DETERMINATION**

After award but before performance, upon a written determination by the appropriate chief procurement officer (CPO) that under the facts cancellation of award is clearly in the best interest of the State, an award may be cancelled prior to performance. SC Code Ann § 11-35-1520(7); SC Regulation 19-445.2085(A) and (C)(8).

Section 11-35-1520(7) states in part that:

Except as otherwise provided by regulation, all decisions to permit . . . cancel(lation) of awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

The regulations authorize the CPO to cancel an award prior to performance. They read:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

(7) Administrative error of the purchasing agency discovered prior to performance  
[19-445.2085(C )]

In this case, the application of the preferences was flawed in the following ways. First, SCDJJ imposed a penalty against TBP, the only bidder who requested the SC resident vendor preference. The Consolidated Procurement Code reads: "A preference of seven

percent must be provided to vendors who are residents of South Carolina or whose products are made, manufactured, or grown in South Carolina as set forth in this section.”

[11-35-1524(A)] The Code establishes two means to gain a SC preference of seven percent; first, that a SC resident bidder is bidding against a bidder who cannot claim such distinction and, second, when a bidder is bidding a product made, manufactured, or grown in SC is bidding against a bidder who cannot claim such a distinction. TBP was the only bidder to claim the SC resident bidder preference. Therefore, a seven percent preference cannot be applied against TBP.

The Code established a hierarchy for application of preference: First, the SC resident bidder and SC end product preference must be applied against bidders not eligible to claim such preference. Second, the US end product preference must be applied against bidders not eligible to claim such preference. Although TBP was the only bidder requesting SC resident vendor preference, SCDJJ penalized TBP by two percent because Murray requested the US end product preference. However, regarding application of the US end product preference, the Code reads, “the cost of an end-product made, manufactured, or grown in other states of the United States is unreasonable if the bid exceeds by more than two percent the lowest qualified bid on the same or similar end-product which is made, manufactured, or grown in a foreign country or territory.” [11-35-1524(B)(5)(b)] [Emphasis added] The US end product preference applies only when a US bidder bids against a bidder offering products made, manufactured, or grown in a foreign country. In this case, there was evidence TBP bid a product made, manufactured, or grown in a foreign country.

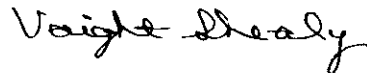
In his letter of June 9, 2009, Mr. Pullie acknowledged SCDJJ's error in the application of the preference and asked the CPO to cancel the award to Bob Barker prior to award due to an administrative error.

The CPO agrees. The correct application of the preferences in this case should have been as follows:

<u>Bidder</u>	<u>Bid Amount</u>	<u>Preferences Requested</u>	<u>Adjusted Bids</u>
TBP	\$37,192.36	SC Resident Vendor	\$37,192.36
Bob Barker	34,859.44	None	37,299.60
Murray Co.	40,126.60	US End Product	42,935.46

TBP was the actual low bidder, not Bob Barker.

The CPO finds that an error in determining the award for Lot #2 of solicitation # IFB09-5557 amounting to a violation of law has occurred and must be corrected. For the foregoing reasons, the CPO hereby determines that it is appropriate to cancel the award to Bob Barker for Lot # 2 for SCDJJ solicitation # IFB09-5557 due to an administrative error. The procurement is returned to SCDJJ for further award determination in accordance with the Code.



R. Voight Shealy  
Chief Procurement Officer  
For Supplies and Services

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## Shealy, Voight

**From:** Protest-MMO  
**Sent:** Monday, June 08, 2009 4:10 PM  
**To:** \_MMO - Procurement; Shealy, Voight  
**Subject:** FW: Intent to Protest DJJ Solicitation IFB09-55571

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**From:** Tbpirmo@aol.com[SMTP:TBPIRMO@AOL.COM]  
**Sent:** Monday, June 08, 2009 4:09:03 PM  
**To:** Protest-MMO  
**Cc:** slpull@scdj.net; tbpservicesinc@starband.net  
**Subject:** Intent to Protest DJJ Solicitation IFB09-55571  
**Auto forwarded by a Rule**

Chief Procurement Officer

MMO

6-08-09

TBP Services Inc. wishes to issue a protest to the intent to award notice of a Dept. of Juvenile Justice Sol # IFB09-5557 for correctional supplies. More specifically for lot #2 of the solicitation

TBP Lot#2 bid prices \$37,192.36 -TBP claimed SC in state vendor preference/no US end product/no SC end product

Award went to BOB Barker Co. lot #2 bid price \$34,859.44 did not claim vendor preference/no US end product/no SC end product

TBP has discussed with the DJJ a possible misapplication or miscalculation of the vendor preferences regarding the calculations of award for the solicitation listed above.

One of our employees has tried to apply the preference as written in the sol and we have come up with TBP with SC Vendor preference to have won the lot#2 group of items by \$107.24

We do understand now after talking with the Mr. Pule that there may be some additional consideration with regard to alternate vendors in a bid tab and are seeking some additional explanation in that regard before the award of this solicitations has been made.

Thank you for your consideration and look forward to your comments.

Best Regards,  
Michelle Novak

**TBP Services Inc.**  
**447 BAKER MILL LAKE LN**  
**GASTON, SC 29053**  
**Direct line Tel: 803-407-2661**  
**Direct Fax: 803-407-0623**  
**Personal Cell: 803-917-9277**

**Main Office Tel: 803-739-2243**  
**Main Office Fax: 803-739-2249**

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8/27/2009

June 9, 2009

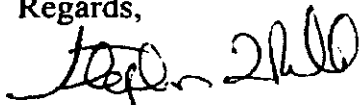
Materials Management Office  
C/o Voight Shealy  
Materials Management Officer  
1201 Main Street  
Suite 600  
Columbia, SC 29210

Mr. Shealy:

I am writing with regard to the attached protest filed by TBP Services Incorporated with regard to SCDJJ solicitation IFB09-55571. The protest is filed for the award made on Lot 2 to Bob Barker Company. In researching this protest; SCDJJ has discovered that an input error on the preference calculator form led to an incorrect award being made on this lot. I have attached both the original calculation of preference and the corrected one. SCDJJ concurs with the protestant that the award of Lot 2 should have been made to TBP Services.

SCDJJ requests relief from this award as allowed under the SC Consolidated Procurement Code regulation 19.445.2085(C) (7) Cancellation of Award Prior to Performance due to an administrative error. We appreciate your assistance in this matter.

Regards,



Stephen Pullie, CPPB  
Director of Procurement Services